

**PT 09-4**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**CHICAGO, ILLINOIS**

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**ALL SAINTS GREEK ORTHODOX  
CHURCH DIOCESE OF CHICAGO,**

**APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Docket No: 08-PT-0010**

**Real Estate Tax Exemption**

**For 2007 Tax Year  
P.I.N. 30-07-09-414-010, 011, 014**

**Will County Parcels**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. John F. Argoudelis, Law Offices of John F. Argoudelis, LLC, on behalf of All Saints Greek Orthodox Church Diocese of Chicago; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether real estate identified by Will County Parcel Index Numbers 30-07-09-414-010, 30-07-09-414-011 and 30-07-09-414-014 (hereinafter the “subject property”) qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes is exempted from real estate taxation. The controversy arises as follows: On October 10, 2007, All Saints Greek Orthodox Church Diocese of Chicago (hereinafter “All Saints”)

filed an Application for Property Tax Exemption with the Will County Board of Review (hereinafter the “Board”). The Board reviewed All Saints’ application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a full year exemption be granted for the subject property. App. Ex. No. 5. The Department rejected the Board’s recommendation in two determinations (IDOR Docket No. 07-99-174, covering P.I.N. 30-07-09-414-010 and IDOR Docket No. 07-99-173, covering P.I.N.S. 30-07-09-414-011 and 30-07-09-414-014), both dated February 15, 2008, finding that the subject property was not in exempt use in 2007. Dept. Ex. No. 1. On March 12, 2008, All Saints filed a request for a hearing as to the exemption denials and presented evidence at a formal evidentiary hearing on November 6, 2008, with Father Stephen Bithos, Priest at All Saints, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use, or being prepared for exempt use, in 2007. Tr. p. 6; Dept. Ex. No. 1.
2. All Saints is part of the Greek Orthodox Metropolis of Chicago. The Church has been located in Joliet since 1916. The parish has 250 to 300 families. Tr. pp. 23-24.
3. All Saints is located at 102 North Broadway in Joliet. The three P.I.N.S at issue in this case are located at 101 North Broadway and 103-105 North Broadway, across the street from the Church. The P.I.N.S contained two houses on three lots. All Saints’ purpose in purchasing the lots was to tear down the houses and use the lots for church

parking. No development work was done on the property in 2007. Tr. pp. 7-8, 10, 21-23.

4. All Saints acquired ownership of the three P.I.N.S in December, 2005, by “Outright Assignment” of “100% of the total rights, power, privileges, and beneficial ownership” from First Midwest Bank under Trust No. 8234 (101 North Broadway) and Trust No. 8210 (103-105 North Broadway). Tr. pp. 17-19; App. Ex. Nos. 3 and 4.

#### **CONCLUSIONS OF LAW:**

An examination of the record establishes that All Saints has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2007 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the

General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts property used exclusively for religious purposes. 35 ILCS 200/15-40 (1996). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1933).

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32 Ill. 2d 249 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

Father Bithos testified at the evidentiary hearing that All Saints’ purpose in purchasing the lots “was to eventually tear down the buildings and use them for parking.” Tr. pp. 10-11. All Saints Greek Orthodox Church is located at 102 North Broadway in Joliet. The three P.I.N.S at issue in this case are located at 101 North Broadway and 103-105 North Broadway, across the street from the Church. The P.I.N.S contained two houses on three lots. Tr. pp. 7-8, 10, 21-23. All Saints did not make any changes to the

houses in 2007 because All Saints was “going to demolish them eventually.” Tr. p. 23. Although exemptions have been allowed where property is in the actual process of development and adaptation for exempt use, Father Bithos’ testimony was that there was no development or adaptation of the property in 2007.

The Department’s February 15, 2008, determination denying the instant exemption request was based solely on the Department’s conclusion that the subject property was not in exempt use in 2007. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that All Saints owned the subject property and qualified as a “religion.” These conclusions were unchallenged in the instant proceeding.

All Saints is part of the Greek Orthodox Metropolis of Chicago. The Church has been located at 102 North Broadway in Joliet since 1916. The parish has 250 to 300 families. Tr. pp. 23-24. All Saints acquired ownership of the three P.I.N.S in December, 2005, by “Outright Assignment” of “100% of the total rights, power, privileges, and beneficial ownership” from First Midwest Bank under Trust No. 8234 (101 North Broadway) and Trust No. 8210 (103-105 North Broadway). Tr. pp. 17-19; App. Ex. Nos. 3 and 4.

Father Bithos testified that the subject property had been used for administrative, educational and parking purposes throughout 2007. According to Father Bithos, youth activities were held in the houses on the subject property. “We stored paperwork there and different supplies that we needed.” Tr. pp. 9-10. He testified that the houses were used for Bible classes and meetings during the day. Tr. p. 15.

No documentary evidence was admitted to support any of the above testimony. No schedules or Church bulletins showing use of the subject property were offered into evidence. No photographs showing use of the subject property were offered into evidence. The only documents indicating use of the subject property that were offered into evidence by All Saints were two affidavits, signed and attested to by Father Bithos. These affidavits were originally submitted with All Saints' PTAX-300, "Religious Application for Non-homestead Property Tax Exemption." The affidavits were insufficient for the Department to grant All Saints an exemption for the subject property at the time of All Saints' original application.

The question of whether areas used for storage may be exempt from taxation must be based on the standard set forth in MacMurray College v. Wright, 38 Ill. 2d 272 (1967), where the court stated that an "exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the [religious] objectives, or the efficient administration of the particular institution." There was no testimony as to why All Saints used the subject property for storage. There was no testimony as to how storage on the subject property was necessary for the accomplishment and fulfillment of any of All Saints' objectives or its efficient administration.

Father Bithos testified that "we did parking on the property and behind the houses" and "they would park in the back." Tr. pp. 10, 15. "Parking areas" are exempt if the areas are owned by a religious institution, not leased or used for profit, and used as a part of a use for which exemption is provided by the Property Tax Code. 35 ILCS 200/15-125. Although parking may have constituted an exempt use of the subject

property in 2007, I cannot recommend an exemption for an area “behind the houses” or “in the back” without documentary evidence as to the exact space used.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2007 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Will County parcels, identified by P.I.N.S. 30-07-09-414-010, 30-07-09-414-011 and 30-07-09-414-014 should not be exempt from property taxes for the 2007 assessment year.

ENTER:

January 21, 2009

Kenneth J. Galvin  
Administrative Law Judge